

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4224 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THAKORBHAI ZAVERBHAI THAKOR

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner

MR JANI Ld. AGP for Respondent No. 1, 2, 4

MR BT RAO Ld. Addl. STANDING COUNSEL for resp.no.3.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 16/07/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India, has challenged the legality and validity of the order of detention dated 25.3.1998 passed by the District Magistrate, Anand, under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

IN the grounds of detention supplied to the petitioner on the even date, it is alleged that the petitioner has adulterated diesel with kerosene with a view to achieve personal gain. It is also alleged that the petitioner is personally responsible for making false accounts. Considering the allegations made in the grounds of detention, the detaining authority passed the order of detention under sec. 3(2) to prevent the petitioner from acting in any manner prejudicial to the maintenance of supply of commodities essential to the community.

Mr Patel learned advocate for the petitioner raised number of contentions challenging the order of detention, however, it is not necessary to refer and to decide the same, as the petition can be disposed of only on the ground that the subjective satisfaction arrived at by the detaining authority in taking ground into consideration does not support the detention order and, therefore, the order passed on extreneous ground. Reading the allegations of alteration of diesel with kerosene is made against the petitioner, and it is also alleged that this illegal activity is carried out by the petitioner with a view to achieve personal gain and for that, the petitioner has prepared false account of the quota of diesel. After considering this illegality, the detaining authority has recorded a satisfaction that with a view to prevent black marketing and to conserve the maintenance of essential supply, it is necessary to detain the petitioner. Thus, the satisfaction arrived at by the detaining authority on the facts which is quite different to the facts stated in the ground of detention and, therefore, the satisfaction arrived at by the detaining authority is not genuine and quite extreneous and would clearly indicates non-appliction of mind on the part of detaining authority in passing the order of detention, therefore, order of detention vitiates.

In the result, this petition is allowed. The impugned order dated 25.3.98 is set aside. The petitioner is ordered to be released forthwith, if he is not required for any other lawful reason. Rule made absolute.
